



ENVIRONMENTAL PROTECTION AGENCY

[FRL-9767-1]

State Program Requirements; Approval of Application to Administer Partial National Pollutant Discharge Elimination Program; Oklahoma

AGENCY: Environmental Protection Agency.

ACTION: Approval of Oklahoma Department of Agriculture, Food and Forestry's (ODAFF) Agricultural Pollutant Discharge Elimination System program under the Clean Water Act.

SUMMARY: On December 20, 2012, the Regional Administrator for the Environmental Protection Agency, Region 6 (EPA) approved the request of the State of Oklahoma for authorization of the Agriculture Pollutant Discharge Elimination System (AgPDES) program pursuant to Section 402(b) of the Clean Water Act (CWA or “the Act”). The AgPDES program will be administered by the Oklahoma Department of Agriculture, Food and Forestry (ODAFF) and is a major category partial National Pollutant Discharge Elimination System (NPDES) permit program under Section 402(n)(3) of the Act for all discharges of pollutants into waters of the United States within ODAFF’s jurisdiction.

EFFECTIVE DATE: Pursuant to 40 CFR 123.61(c), the AgPDES program was approved and became effective on December 20, 2012. As of the date of program approval, NPDES permitting authority for those discharges subject to the AgPDES program transferred from EPA to ODAFF.

TO VIEW OR OBTAIN COPIES OF DOCUMENTS: Copies of ODAFF’s program approval submission (referred to throughout this document as ODAFF’s application) and all other documents in the Administrative Record are available for inspection from 9 am to 4 pm, Monday through Friday, excluding legal holidays, at EPA Region 6, 1445 Ross Ave., Dallas, Texas 75202.

A copy of ODAFF's application is available online at the EPA Region 6 web page:

<http://www.epa.gov/region6/water/npdes/ok-daff/index.html> A paper copy of part of all of

the State's application or any other documents in the Administrative Record may be obtained from EPA Region 6 in Dallas for a cost of .15 cents per page.

FOR FURTHER INFORMATION CONTACT: Ms. Denise Hamilton at the EPA address listed above or by calling (214) 665-2775, FAX (214) 665-2191, e-mail:

Hamilton.Denise@epa.gov.

SUPPLEMENTAL INFORMATION: Section 402 of the CWA created the NPDES program under which EPA may issue permits for the point source discharge of pollutants to waters of the United States under conditions required by the Act. Section 402(b) requires EPA to authorize a State to administer an equivalent state program upon the Governor's request, provided the State has appropriate legal authority and a program sufficient to meet the Act's requirements. Major category partial permit program approval is provided for under section 402(n)(3) of the CWA. Pursuant to that Section, EPA may approve a partial permit program covering a major category of a State's discharges if the program represents a complete permit program and covers all of the discharges under the jurisdiction of the agency seeking approval, and if EPA determines that the partial program represents a significant and identifiable part of the State program required by Section 402(b) of the Act. The Oklahoma discharges subject to regulation under the federal NPDES program and the AgPDES program administered by ODAFF are discharges associated with concentrated animal feeding operations ("CAFO"), discharges from the application of biological pesticides or chemical pesticides that leave a residue, discharges from silviculture activities, and discharges of storm water from agricultural activities. ODAFF does not have jurisdiction over all discharges within the State of Oklahoma. A large portion of the State's discharges are covered by the Oklahoma Department

of Environmental Quality's (ODEQ's) approved NPDES program. EPA retains jurisdiction over discharges to Indian Country, as defined in 18 U.S.C. § 1151, and over discharges under the jurisdiction of the Oklahoma Corporation Commission.

On August 16, 2012, the Governor of Oklahoma requested NPDES major category partial permit program approval and submitted, in accordance with 40 CFR Section 123.21 a program description (including funding, personnel requirements and organization, and permit and enforcement procedures), a Statement of Legal Authority, copies of applicable State statutes and regulations, and a Memorandum of Agreement (MOA) to be executed by the Regional Administrator of EPA Region 6 and the Commissioner of Agriculture for ODAFF. ODAFF seeks permitting and enforcement authority for all discharges within its jurisdiction. At the request of EPA, ODAFF made revisions to several of the program submittal documents and the last of these revisions was received by EPA on September 7, 2012. EPA determined that ODAFF's August 16th application for partial program approval, as amended September 7, 2012, was complete under 40 CFR 123.21 and a letter of completeness was sent to ODAFF on September 14, 2012. On September 24, 2012, notice of the State's application was published in the Federal Register (77 FR 58830), announcing a 45 day public comment period. Notice was also published in the Daily Oklahoman and Tulsa World newspapers on September 25, 2012. Both an informal public meeting and a public hearing were held in Oklahoma City, Oklahoma on October 25, 2012. The public meeting included a presentation on Oklahoma's request for AgPDES program approval and a question and answer session. Oral and written comments for the official record were accepted at the public hearing, which was held in accordance with 40 CFR 124.12.

EPA was required to approve ODAFF's application within 90 days of submittal of a complete submission unless the submittal did not meet the requirements of Section 402(b) of the Act and EPA regulations, or EPA and ODAFF jointly agreed to extend this deadline. (See 40 CFR 123.21 (d). By email dated December 4, 2012, EPA and ODAFF extended the statutory review period until December 20, 2012.

To obtain program approval, ODAFF was required to show among other things that it has authority to issue permits that comply with the Act, authority to impose civil and criminal penalties for permit violations, and authority to ensure that the public is given notice and opportunity for a hearing on each proposed permit.

Authority to approve State programs is provided to EPA pursuant to Section 402(b) of the CWA. The regulatory requirements for state program approval are set forth in 40 CFR Part 123. EPA's decision to approve the AgPDES program is based on the requirements of CWA §402 and 40 CFR Part 123. In making its decision, EPA considered all comments and issues raised during the public comment period, including those raised at the public hearing. A copy of the Region's responses to comments and ODAFF's program submittal documents are available on the EPA Region 6 internet site: <http://www.epa.gov/region6/water/npdes/ok-daff/index.html>. The comments and public hearing record are contained in the administrative record supporting this notice.

Scope, Transfer of NPDES Authority, and Summary of the AgPDES Program

A. Scope of the Partial Program

The AgPDES program is a major category partial permit program in conformance with the requirements of Section 402(n)(3) of the CWA. The program is a complete permit program for all discharges under ODAFF's jurisdiction and represents a significant and identifiable part of the state program required by § 402(b) of the CWA. The Oklahoma discharges subject to regulation

under the federal NPDES program and the AgPDES program administered by ODAFF are discharges associated with concentrated animal feeding operations ("CAFO"), discharges from the application of biological pesticides or chemical pesticides that leave a residue, discharges from silviculture activities, and discharges of storm water from agricultural activities.

ODAFF has jurisdiction over all matters affecting agriculture that have not been expressly delegated to another state or federal agency, as set out in the Oklahoma Agriculture Code, and is responsible for fully implementing and enforcing the laws and rules within its jurisdictional areas of environmental responsibility. The Oklahoma Environmental Quality Act gives ODAFF environmental jurisdiction over point source discharges from agricultural crop production and agricultural services. It also gives the Agency environmental jurisdiction specific to the application of pesticides. ODAFF does not have jurisdiction over storm water discharges associated with industrial activity (as defined at 40 CFR 122.26(b)(14)) at facilities whose primary industrial activity is storage of grain, feed seed, fertilizer, and agriculture chemicals (e.g., SIC code 4121) and are thus required by federal regulations to have a storm water permit. However, ODAFF's jurisdiction includes all discharges at facilities regulated by ODAFF that only incidentally store grain, feed seed, fertilizer, and agriculture chemicals to support the primary activity of the facility (e.g., feed storage at a CAFO). ODAFF has jurisdiction to regulate discharges resulting from agricultural and non-agricultural applications of pesticides; except for discharges from industrial processes, municipal treatment works, and municipal and industrial storm water, for which the Oklahoma Environmental Quality Act has expressly delegated jurisdiction to the Oklahoma Department of Environmental Quality (ODEQ). ODAFF also has jurisdiction to regulate discharges resulting from silvicultural discharges related to tree growing, planting management, log transport and log storage, and other activities, except those related

to wood preservation and processing regulated pursuant to 40 C.F.R. Part 429 (Timber Products Processing) and Part 436 (Mineral Mining and Processing), which are regulated by ODEQ.

Activities that are not within ODAFF's environmental jurisdiction include commercial manufacturers of fertilizers, grain and feed products, and chemicals; manufacturing of food and kindred products, tobacco, paper, lumber, wood, textile mill and other agricultural products; slaughterhouses, except for feedlots at those facilities; and aquaculture and fish hatcheries. These exceptions to the Agency's jurisdiction include, but are not limited to, discharges of pollutants and storm water to waters of the state, surface impoundments and land application of wastes and sludge, and other pollution originating at these facilities.

ODAFF did not seek authority to regulate discharges to Indian Country, as defined in 18 U.S.C. § 1151. EPA retains NPDES permitting authority over Indian Country in the State of Oklahoma.

B. Transfer of NPDES Authority and Pending Actions

Authority for all NPDES permitting activities within the scope of ODAFF's jurisdiction have been transferred to the State. EPA retains on a permanent basis its authority under section 402(d) of the CWA to object to AgPDES permits proposed by ODAFF, and if the objections are not resolved, to issue federal NPDES permits for those discharges. EPA also retains on a permanent basis independent enforcement authority to address civil and/or criminal CWA violations under §§ 309 and 402(i) of the Act and to file federal enforcement actions in those instances in which EPA determines the State has not taken timely or appropriate enforcement action.

Pursuant to the MOA between EPA and ODAFF, ODAFF has taken over administration of EPA-issued general permits for those discharges under its jurisdiction while EPA retains administration of general permits for those discharges remaining under EPA jurisdiction.

Dischargers remaining under EPA jurisdiction include those discharges to waters in Indian Country and those discharges under the jurisdiction of the Oklahoma Corporation Commission. The transfer of EPA-issued permits is described in Section IV.B of the MOA.

The CAFO general permit OKG010000 (discharges from CAFOs) is being transferred to ODAFF with no discharges authorized by that permit remaining under EPA jurisdiction. OKR12000F (Construction General Permit - storm water discharges associated with industrial activity), OKR05000F (Multi-Sector General Permit - storm water associated with construction activities), and OKG87#### (Pesticides General Permit - discharges associated with application of pesticides to waters of the United States) are being partially transferred to ODAFF with EPA retaining the permits for discharges remaining under EPA jurisdiction. For general permits OKR05000F and OKR12000F, EPA will continue to administer the permit for discharges under the jurisdiction of the OCC. For general permit OKG87####, EPA will continue to administer the permit for discharges to Indian Country. Descriptions of the scope of coverage in general permits OKG87####, OKR05000F and OKR12000F are being changed to reflect the discharges still being permitted by EPA. ODAFF is modifying the permit scope of coverage, Notice of Intent, and reporting requirements to reflect their assumption of these permits for those discharges under the new AgPDES program.

Responsiveness Summary

On September 24, 2012, notice of the State's application was published in the Federal Register (77 FR 58830), announcing a 45 day public comment period. EPA Region 6 has considered and prepared written responses to all comments received. In response to comments received and for the sake of clarification, several wording changes have been to the Memorandum of Agreement between EPA and ODAFF. A revision to Table 3-1 of the Enforcement Management System, Chapter 3, has also been made for the sake of clarification. A

copy of the Region's responses to comments and the program documents may be obtained from the EPA Region 6 internet site: <http://www.epa.gov/region6/water/npdes/ok-daff/index.html>

Changes made to the MOA and to Table 3-1 of the Enforcement Management System as a result of comments are marked in redline/strikeout.

I hereby provide public notice of EPA's approval of the State of Oklahoma's request for authorization for ODAFF to administer the AgPDES program for discharges into navigable waters within its jurisdiction in accordance with Section 402(b) of the CWA and 40 CFR Part 123.

Dated : December 20, 2012.

Ron Curry,

Regional Administrator, EPA Region 6.

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